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AUTHOR	Marquardt, R. G.; Boice, Eldon G.
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ABSTRACT

During the years 1967-69, the Instruction Subcommittee of the Joint Committee on Education held a series of hearings to pinpoint the financial and organizational problems of educational television in the state of Washington. The problems revealed by this investigation prompted the Subcommittee to contract with Dr. Kenneth Christiansen, Director of Television for the University of Florida, for consultation. Dr. Christiansen''s three major conclusions were that there was a need for coordination and planning, for a new base of funding, and for a state educational television authority. These recommendations were incorporated into a senate bill. The bill failed to pass the 1969 legislature. The Subcommittee subsequently revised the bill to include provision for more participation in the field of public broadcasting, for cooperation with a proposed state telecommunications network, and for an advisory council composed of the managers of the state's educational television stations. In addition, closed circuit television was excluded from the scope of the bill, measures were recommended to guarantee that all material produced for instructional assistance by the educational television system would be made available to private schools, and sources of funding for the program were clarified. (JY)

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PUBLIC BROADCASTING AND EDUCATIONAL TELEVISION: A REPORT TO THE WASHINGTON STATE LEGISLATURE BY THE SUBCOMMITTEE ON EDUCATIONAL TELEVISION AND LIBRARIES OF THE JOINT COMMITTEE ON EDUCATION

SUBCOMMITTEE ON EDUCATIONAL TELEVISION AND LIBRARIES
Senator R. G. "Dick" Marquardt, Chairman

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Rep. Harold S. Zimmerman

Mr. Eldon G. Boice, Consultant

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Gary M. Odegaard

Representatives:

Dale E. Hoggins
Audley F. Mahaffey
David G. Sprague
Harold S. Zimmerman

COMMITTEE OFFICE

House Office Building
Olympia, Washington 98501

November 5, 1970

Executive Committee
Rep. Frank B. Brouillet, *Chairman*
Sen. R. G. "Dick" Marquardt, *Vice Chairman*
Sen. Bob Ridder, *Secretary*

Executive Secretary
Ralph E. Julnes

Phone: (206) 753-2080
SCAN 234-2080

JOINT COMMITTEE ON EDUCATION

WASHINGTON STATE LEGISLATURE

HOUSE OFFICE BUILDING

OLYMPIA, WASHINGTON 98501

Senators
Pete Francis
Jack Metcalf
Gary M. Odegaard

Representatives
Dale E. Hoggins
Audley F. Mahaffey
David G. Sprague
Harold S. Zimmerman

November 5, 1970

GOVERNOR DANIEL J. EVANS

MEMBERS OF THE WASHINGTON STATE LEGISLATURE

AND CITIZENS OF THE STATE OF WASHINGTON:

For some years, the Joint Committee on Education has been concerned that the State system of educational television does not provide adequate service to the citizens of the State because of problems with its organization and instability in its financing. Legislation to correct this situation was introduced into the 1969 Legislature, but it failed to emerge from the Senate. The following report outlines the deliberations of the Subcommittee on Educational Television and Libraries since 1969 and recommends the re-introduction of public broadcasting legislation into the 1971 Session of the Legislature. Our report is herewith transmitted.

Respectfully submitted,

Dick Marquardt

R. G. "Dick" Marquardt, Chairman
SUBCOMMITTEE ON EDUCATIONAL
TELEVISION AND LIBRARIES

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Sen. R. G. "Dick" Marquardt
Chairman

Mr. Eldon G. Boice
Consultant

INTRODUCTION

Educational television is one of the tools made available for use through the application of contemporary technology. Of the many uses made of television, perhaps the most significant is for instruction in the schools. Through television, invaluable information is made available to students with a speed and visual impact impossible to achieve through any other medium. Educators in the State of Washington have made considerable use of educational television. Currently, six stations are engaged in broadcasting programs for use in the public schools. Their programs reach thousands of classrooms in Washington and enhance the education received by more than 700,000 common school students.

HISTORY OF SUBCOMMITTEE INVOLVEMENT IN EDUCATIONAL TELEVISION

During the 1967-69 interim, the Instruction Subcommittee of the Joint Committee on Education held a series of hearings during which the financial and organizational problems of educational television in Washington were explored in detail. The Subcommittee found that the uncoordinated growth of educational television in Washington had led to considerable duplication of effort among the stations and that the procedure for funding educational television from contributions by user-districts has resulted in unstable financial arrangements, difficulties in planning, and substantial differences in quality of programming produced by the various stations. As a consequence of these difficulties, some 76,000 Washington common school students receive no televised instruction.

The Subcommittee also was concerned that Washington's educational television system was not prepared for the impact of federal assistance anticipated as a result of congressional enactments related to public broadcasting. An educational television commission has existed since 1962. However, because of its limited powers, the commission will not be able to provide the leadership and coordination that will be necessary when strong federal support for educational television comes into being.

THE CHRISTIANSEN REPORT

These problems prompted the Subcommittee to contract with Dr. Kenneth A. Christiansen, Director of Television for the University of Florida, for a consultant's report on the problems of educational television in Washington and recommendations concerning what might be done to guarantee

educational television a successful future. The three major conclusions of Dr. Christianson's report remain timely and are reprinted below:

NEED FOR COORDINATION AND PLANNING

> The analyses in Part II (of the Christiansen report) demonstrate that there is a considerable amount of duplication in programming, and production of the ETV stations. It also can be deduced from short and long-term operating and capital budget requests that, if they are approved, duplication will not be decreased. Furthermore, the writer takes issue in Part II with the pedagogical arguments in support of duplication by noting: "When one area has access to a choice of three instructional programs in fourth grade music, . . . and areas involving 76,000 school children have access to no such service whatever, it appears that choice and pedagogical particularity are luxuries amid deprivation."
>
> Duplication has its place and can be defended. However, when state funds are involved duplication is justified only after equitable service requirements are met. Thus, the present emphasis should be upon statewide coverage of all aspects of ETV for all levels and areas of the State's educational system; i.e., pre-school, K-12, adult and continuing education, vocational education, community college and other aspects of higher education, and public television. This will require planning and coordination by a state-level agency with statewide responsibilities.

NEED FOR A NEW BASE OF FUNDING

> The total cost of four of the State's six ETV stations -- Clover Park, Tacoma, Yakima, and Spokane -- and three-fourths of Seattle's, are borne by funds from school districts. The remaining one-fourth of Seattle's is provided by the University of Washington. All of Pullman's is carried by funds from Washington State University's budget.
>
> The public school districts are becoming restive at having their budgets carry the burden of the stations. One pronounced reason is the continuing uncertainty of their own revenues as a result of the heavy reliance in the State of Washington on annual school levies. Equity and propriety are also factors. One station, for example, relies heavily on voluntary contributions from "using" school districts. However, some public and private school systems are using the ETV services without full financial participation. Furthermore, approximately one-half of the stations' operations relate to non-instructional "public" programming provided to out-of-

school audiences. And there is a growing interest in using the stations by the community colleges and by other public and private agencies.

If no stations or ETV service had existed in Washington, the writer would have had no hesitation to recommend a complete break from the existing system of station operation. For example, a system whereby the State would hold the licenses to all broadcast operations and would operate and program the ETV facilities through a statewide network or interconnected service would have been a political possibility. However, such a recommendation at present would disallow the fact that the present patterns of station existence and the equation of local service with local station licensing are jealously guarded and held by most -- but not all -- of the participants in the ETV system.

There is no doubt, though, that a new source of funding is needed, The only practicable and equitable base of support that insures continuous financing is the State's general fund. However, under such circumstances the State has every right -- in fact, a constitutional obligation -- to equalize ETV opportunities for all students. This is an additional reason why there must be more effective statewide planning and coordination. It adds a new dimension. If local licensing -- i.e., the present pattern of station operation and control by a few educational agencies -- is to continue, the State must insist on conformity to a master plan developed by the proposed coordinating authority as a condition of receiving State aid.

NEED FOR A NEW STATE ETV AUTHORITY

The most important immediate recommendation in this report is a new State ETV authority. The present State agency -- the Washington State Educational Television Commission -- consists of 16 members. It includes a representative of each of the six institutions licensed to operate ETV station in the State. In addition, it has a representative of community colleges by virute of a district community college president; of the Office of the State Superintendent of Public Instruction by virtue of a staff member who serves as a Commission member and as the part-time executive secretary of the Commission; of State colleges by virtue of a former State college president who now is employed as a spokesman for private colleges and universities in the State; of private colleges by virtue of a former private college administrator, now a private college professor, who also serves on the advisory board of a local ETV station; of commercial television by virtue of a public service director for a commercial station; of school directors by virtue of a school board member, who was formerly the President of the

Washington State School Directors' Association; of school superintendents by virtue of three superintendents from "using" districts; and of the public by virtue of one member with no proprietary interest in a station or the education establishment, but who does serve on the advisory board of a local ETV station.

The Commission, in effect, largely represents a group of separate vested interests. And much more importantly, it has been heavily influenced by representatives of operating stations -- partly because each has exercised considerable zeal in protecting or furthering the interests of his own station, and partly because the station representatives generally have had considerably more expertise in ETV.

The Commission originally was created to advise the U. S. Department of Health, Education, and Welfare on the allocation of federal matching funds to the State for new stations and the improvement of existing ones. Each of these stations, because of limited federal funds, became competitive with the others. The result is that the Commission has been unable to establish a thoroughly objective set of criteria or order of priority for the allocation of federal funds.

The competiveness of the stations manifested a situation where no station representative would vote against another station's request, however worthy or not of support it might have been, for fear his own request would be voted down by a competitor. It is doubtful whether the best interests of the entire State have been served.

Moreover, the system has produced other side effects. Considerable dissention developed among the stations, for only two of the station managers have been members of the Commission. These are the managers of the university stations. The public-school-district-owned stations were represented by school superintendents. The school district station managers have felt the university station managers have exercised a disproportionate influence on the Commission in behalf of their own stations to the disadvantage of the school systems. The message is simple: effective coordination does not take place on a voluntary basis.

All in all, it can be summarized that the existing situation is not healthy to the development of a viable statewide ETV system. In addition, the current powers of the ETV Commission are totally inadequate to the development of such a system. Furthermore, there is a desperate need for the continuity and dynamics of a full-time professional staff with special training and capabilities in research and communication functions. The inevitable conclusions are that a new revitalized State ETV agency must be created and that care must be taken not to repeat the errors of the past.

SENATE BILL NO. 279

In essence, the Christiansen recommendations were adopted by the Joint Committee on Education and were incorporated into Senate Bill No. 279, a measure which the Committee introduced into the 1969 Legislature. As introduced, the bill had the endorsement of the existing Washington State Educational Television Commission, the six ETV stations, education groups, and organized labor. Nevertheless, the bill failed to pass the Senate.

Legislators expressed a variety of fears related to the proposed legislation. These ranged from a concern for the bill's financial impact to a reluctance to establish a new commission on the state level. After extensive review, the bill was passed from the Senate Education Committee and, after a considerable period of time, to the Committee on Ways and Means, Subcommittee on Appropriations. After some minor revision by this committee, the bill was again referred to the Senate Rules Committee where it died at the end of the First Extraordinary Session.

COMMITTEE INVOLVEMENT SINCE THE 1969 LEGISLATIVE SESSION

Because of the Committee's continuing concern for the success of educational television in Washington, the 1969-71 Joint Committee on Education established a special Subcommittee on Educational Television and Libraries. For the past year and a half, this Subcommittee has been investigating the problems which the educational television legislation encountered during the 1969 Session and other needs of educational television in Washington. The Subcommittee has held public hearings to explore the reasons for and content of amendments offered to Senate Bill No. 279 during the 1969 Session. They also cosponsored, along with the Washington State Educational Television Commission, a conference on educational television held in Spokane on November 20, 1969.

Because of the limited nature of the 1970 Extraordinary Session, no legislation related to educational television was introduced at that time. It was the belief of the Subcommittee that because of the exceptional nature of the Extraordinary Session and its limited duration, the legislation would not receive the proper consideration, and would only serve to burden further an agenda that was already too full.

REVISIONS SINCE 1969

Three major changes have been made in the educational television legislation since it was introduced in the 1969 Session. First, the act has been retitled to read "Public Broadcasting Act of 1971." This change reflects the growing opinion among those involved in educational television that a substantial portion of their programming and telecasting in the future will be in the field of public broadcasting, i.e., programs for use primarily outside the classroom, which could cause a diminution of their role as an instructional medium for use

within the classroom. It also recognizes an increased interest on the part of the national government in the public broadcasting area, evidenced by the expansion of both its legal and financial support for national public broadcasting.

Second, the proposed legislation now makes provision for its eventual cooperation with a state telecommunications network, should one be developed. The Subcommittee recognizes the possibility that such a network could be developed for the coordination of all communication done by the State in such areas as data processing, telephone, radio, and other transmission media. However, the recommendation to develop such a system is beyond both the scope of the study done by the Subcommittee or the Subcommittee's mandate. Nevertheless, an attempt has been made in the legislation to make provision for connecting a state telecommunications network with the state public broadcasting system, should the state decide to develop the former.

Third, an additional council has been added to the councils advising the public broadcasting commission. This council is to be composed of the managers of the state's educational television stations. It was recognized by the Subcommittee that the educational television managers should have some method for providing direct council policy information and input to the public broadcasting authority, and that the absence of such a council was a serious omission from the previously proposed legislation. To overcome these problems, and to provide for better communications within the proposed public broadcasting system, the Council of Educational Television Station Managers has now been included in the legislative proposal. A section-by-section summary of the proposed act is included in this report as Appendix A. Revisions to Substitute Senate Bill No. 279 are noted in Appendix B and a new draft of the proposed act is contained in Appendix C.

THE EXCLUSION OF CLOSED-CIRCUIT TELEVISION

No provision is made in the legislation for the coordination of closed-circuit television facilities by the proposed public broadcasting authority. Closed-circuit television is coming into increased use in the education institutions in the State of Washington. It is being used for instruction in schools, universities, colleges, and community colleges. The Subcommittee recognizes that closed-circuit television will be used even more in the future. However, it is the Subcommittee's firm belief that the operation of a closed-circuit network within a school district or institution of higher education is essentially the prerogative of that agency and does not reasonable fall under the jurisdiction of a state network for broadcasting. Consequently, the legislation proposed by the Subcommittee does not include provisions which would allow the proposed state public broadcasting authority to interfere with the operation of a local closed-circuit system.

PRIVATE SCHOOLS AND EDUCATIONAL TELEVISION

There was considerable pressure during the 1969 Session of the Legislature to include within the educational television legislation, pro-

visions guaranteeing that all materials produced for instructional assistance by the educational television system be made available to private schools for their use. However, a memorandum from the Office of the Attorney General concerning such a provision stated: "Whether the Washington Supreme Court will find . . . that such distribution constitutes support of a private institution is open to honest disagreement. The mechanics of distribution may well determine whether or not a violation exists. In other words, the more direct the distribution to the students as opposed to through the private institution, the greater the likelihood that no violation will be found."

A copy of the memorandum from the Attorney General's Office is attached to this report as Appendix D. Because of the constitutional questions concerning the distribution of educational television materials to private schools, the proposed legislation includes in Section 24 the following provisions: "In the event the Legislature makes appropriations available to the Commission for the major portion of the financial support of educational television, television program aids and all other related instructional materials shall be made available by the appropriate council free of charge to all students that attend public or private schools." It is the Subcommittee's contention that this revised provision will meet the test of the Washington Constitution; however, a severability clause has been included in case this contention should prove otherwise.

FINANCING EDUCATIONAL TELEVISION

During the 1969 Session of the Legislature questions arose concerning the fiscal impact of the educational television legislation that had been proposed. Tables 1 and 2 outline the cost of operating educational television stations in the State of Washington for the 1971-73 biennium based on projections by the station managers. There are essentially two sources of funding for educational television stations in Washington. The first source is in the projected budgets of the Washington State University and the University of Washington stations, and will be $744,864 for the 1971-73 biennium. Since this money will be in the budgets of the universities it should not be considered in any computation of the possible fiscal impact of the proposed legislation.

Furthermore, the proposed legislation is silent on the percentage of state aid that would accrue to existing stations and given the Legislature maximum flexibility to make such determinations in subsequent biennia. It is, therefore, conceivable, though not recommended, that it will be several bienia before the State assumes its full partnership in the financing of locally licensed ETV stations. The fiscal impact on State funds, then, is dependent upon actions of future legislatures, as it should be.

The second source of funding is local revenues. For the 1971-73 biennium, $2,979,321 is projected by the station managers for the operation of educational television stations in Washington. The figures for each of the stations are indicated in Table 1. These local monies, according to testimony by local school district superintendents, are raised through the passage of special levies. Where levies have failed, the contributing school district usually withdraws its support. Direct state support of

ETV will eliminate this portion of the special levy pressure on school districts. Therefore, state funding of ETV should be considered as an important ingredient in any state attempt to alleviate special levies in the common schools.

TABLE 1

PROJECTED OPERATING BUDGETS FOR WASHINGTON ETV STATIONS
BY SOURCE OF FUNDING, 1971-73 BIENNIUM

ETV Station	Revenue From Local Sources	Revenue From State Sources	Total
Clover Park	$ 836,458	$	$ 836,458
Pullman (WSU)		469,864[a]	469,864
Seattle (UW)	975,000	275,000[b]	1,250,000
Spokane	363,000		363,000
Tacoma	674,863		674,863
Yakima	130,000		130,000[c]
	$2,979,321	$ 744,864	$3,724,185

Table 2 shows the station managers' projected capital budgets for the 1971-73 biennium. Monies for capital improvements come from a variety of sources, including the State Legislature--as in the case of the UW and WSU stations--and the national government. For the State to support the capital improvements at the six educational television stations, the total cost would be $2,094,815, which includes that portion which the 1971 Legislature will allocate for the UW and WSU stations. Whether or not all of the capital construction costs in future bienia would be assumed by the State, would be based on two things. First, it is probable that not all of the stations in the State would choose to affiliate with the new public broadcasting system. In that instance their budgets would need to come from the sources now available to them. Second, it would be up to a determination by the Legislature as to whether or not all of the capital budgets would be supported through state funding and whether or not all of the proposed projects are deemed worthwhile. The proposed public broadcasting commission would assest the Legislature in assessing these needs.

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[a]The entire support for the Washington State University station comes from the University's budget.

[b]Approximately 22 percent of the Seattle station's support is included in the University of Washington budget.

[c]This figure represents projected revenues. The management of the station states that a minimum of $200,000 would be needed to operate the station properly.

TABLE 2

PROJECTED CAPITAL BUDGETS FOR WASHINGTON ETV STATIONS, 1971-73 BIENNIUM

ETV Station	Projection[a]
Clover Park	$ 125,000
Pullman (WSU)	223,115
Seattle (UW)	1,452,000[b]
Spokane	50,000
Tacoma	244,700[c]
Yakima	No Projection[d]
TOTAL	$ 2,094,815

RECOMMENDATIONS

Recommendation No. 1.

That the Joint Committee on Education sponsor and submit to the 1971 Legislature the proposed Public Broadcasting Act of 1971 (See Appendix C).

Recommendation No. 2.

That state funding of the operating costs of the education television stations be considered as part of a comprehensive plan or formula to relieve special levies in the common schools of the State of Washington.

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[a]The source of funding for each of these stations is still in the planning state. Some federal funds are anticipated. However, a considerable portion, if not all, of the funds requested by the Seattle and Pullman stations will be in the capital budget requests of the UW and WSU to the 1971 Legislature.

[b]The four-year projection is $2,600,000.

[c]This is the Tacoma station's minimum estimate. It could cost considerably more should a need develop for the further expansion of the Tacoma facility. The cost of this potential future expansion has not been estimated.

[d]This results from the fact that no money is available. The staff estimates that it would cost $100,000 to make needed capital improvements.

APPENDIX A

ANALYSIS OF THE PROPOSED PUBLIC BORADCASTING ACT BY SECTION

Section 1. Names the act: "The Public Braodcasting Act of 1970."

Sec. 2. Defines purposes of the act as to achieve:

1) broadcast instructional television for all levels of public and private schools,

2) that this distribution goes to all geographical areas of the State,

3) statewide public broadcasting network and other distribution systems,

4) avoidance of unnecessary duplication of programming, coverage and production,

5) development of instructional programming by those agencies having legal responsibility for various levels and areas of instruction,

6) improvement of fiscal operation and management of stations to more effectively serve their communities.

Sec. 3. This section defines terms used in the act. The most important definitions are:

1) "Independent Stations." These are stations licensed and operated by other state agencies and who are not affiliated with the state system.

2) "Affiliated Stations." Stations who use the, or contribute to, state facilities but are licensed and operated by other agencies.

3) "Commission Stations." Stations licensed directly to the State Commission.

Sec. 4. Creates a State Commission knows as the Washington State Public Broadcasting Commission.

Sec. 5. Defines the membership of the Commission.

1) Eleven public members appointed by the governor for four-year terms representing public and private schools, major political parties, geographical areas, business, professions, and labor: PROVIDED, That initial terms of the members of the Commission shall be selected by lot.

2) Five ex-officio members: Superintendent of Public Instruction, Director of Vocational Education, Director of the State System for Community College Education, the executive officer or the Council for Higher Education, and Chairman of the Council of Station Managers.

Sec. 6. Provides for the appointment of further public members of the Commission at terms of four-years' duration. Vacancies are to be filled for the duration of the terms.

Sec. 7. Terms of the public members shall expire at midnight, June 30, the respective year for which the term expires.

Sec. 8. Ex-officio members shall serve as long as they hold their respective positions. They shall not be eligible to vote or serve as officers of the commission.

Sec. 9. Public members are to receive no salary for their services but can receive per diem and travel expenses as provided for elected officials in RCW 44.04.120.

Sec. 10. Authorizes the Commission to employ a director and such assistant directors as are necessary for the management of the system. Provides further that the positions of director, deputy director, assistant director, shall be exempt positions.

Sec. 11. Authorizes the director to employ assistants, clerks and others as may be required for the proper discharge of the functions of the Commission.

Sec. 12. Authorizes the Commission to purchase its own real property.

Sec. 13. Defines a quorum of the Commission as a majority of the public members, and provides that no action shall be taken unless by concurrence of a majority of the public members of the Commission.

Sec. 14. In addition to other powers and duties imposed on the Commission by this act, the Commission shall have the following powers, duties and responsibilities:

1) Master planning for State system of public broadcasting.

2) Revise and evaluate master plan and update it.

3) Recommend to stations new policies deemed desirable for the implementation of the master plan.

4) Provide, operate, manage, and maintain a state public broadcasting distribution system, provided that the Commission for its distribution service shall seek to utilize common carrier facilities when feasible for intercity transmission. PROVIDED FURTHER, That should the State establish a statewide telecommunications system subsequent to the passage of this act, the Commission shall seek to cooperate in the use of such facilities.

5) Allocate funds to affiliated stations for approved capital operating costs.

6) Expend funds for its own operation.

7) Appoint consultants and advisory committees and enter into contracts.

8) Conduct studies.

9) Report information as requested by the governor.

Sec. 15. Provides that the initial appointment of the members of the Commission shall be made prior to June 15, 1971 and that the first meeting shall be held no later than July 15 of that year.

Sec. 16. Provides for the annual selection of the chairman and vice-chairman by the vote of the Commission and for the adoption of internal operation procedures. Provides also that Commission rules and regulations applicable to external procedures shall be subject to the Administrative Procedure Act.

Sec. 17. Subjects payments made by the Commission to the state budget and accounting system. Provides further that expenditures be approved by the Commission and signed by the director.

Sec. 18. Provides that nothing in the act shall be deemed to derogate from powers and duties presently conferred upon the separate governing boards licensed to operate educational television stations. Such governing boards may choose to remain independent from or affiliated with the state system.

Sec. 19. Authorizes the Commission to own, operate, and manage educational television stations.

Sec. 20. Authorizes the Commission to accept federal or private funds or grants for expenditures in the public broadcasting area.

Sec. 21. Creates the following councils under the auspices of the Commission:

1) Council for common school instructional television.

2) Council for vocational-technical instructional television.

3) Council for community college instructional television.

4) Council for college and university instructional television.

5) Council for public television.

6) Council of educational television station managers.

7) Such additional councils with such members as deemed desirable by the authority.

Sec. 22. Provides the members of the council, with the exception of the members of the Commission and the council of station managers, shall serve at the pleasure of the apointing official and shall be reimbursed for expenses from funds of the Commission.

Sec. 23. The director of the system or his designee shall serve as the executive secretary for each of the councils enumerated in Sec. 21. Further, the Commission shall provide rules and regulations for the operation of the councils.

Sec. 24. Provides for the production of programs under the supervision of the councils, in state-owned facilities or by contract with independent or affiliated stations or other public and private agencies. Also makes instruction aids available free of charge to private and public school students. Further provides that funds budgeted by the Commission for programming have the approval of the appropriate council.

Sec. 25. The council of station managers shall advise the Commission on the operation of capital budget of the affiliated stations, including funds to be allocated to each.

Sec. 26. Transfers of licenses to ownership by the Commission shall be subject to FCC regulations.

Sec. 27. Protects jobs and benefits of the employees of an ETV station whose ownership is transferred to the Commission.

Sec. 28. Nothing in this act should be deemed to derogate from the powers and duties conferred on the governing boards of the common schools or institutions of higher education regarding any instructional training, education program, in any subject matter or area. In addition, no funds shall be allocated by the Commission for such instruction.

Sec. 29. Provides for the development of a comprehensive plan for financing and developing public broadcasting and educational radio with the advice of educational radio stations and other public and private agencies involved.

Sec. 30. Repeals the laws creating the existing educational television commission.

Sec. 31. Severability clause.

Sec. 32. Emergency clause.

WORKING DRAFT FOR THE
SUBCOMMITTEE ON EDUCATIONAL TELEVISION AND LIBRARIES
JOINT COMMITTEE ON EDUCATION

~~SUBSTITUTE SENATE BILL NO. 279~~

~~State of Washington~~
~~41st Legislature~~
~~1st Extraordinary Session~~

~~By Committee on Ways and Means~~

~~Read first time April 24, 1969 and passed to second reading.~~

AN ACT Relating to public and instructional ~~educational~~ television; repealing ~~chapter 129, Laws of 1969 ex. sess. and chapter 28.91 RCW and~~ chapter 28A.91 RCW ~~if the 1969 education code becomes effective;~~ declaring an emergency; and making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Sections 1 through 28 of this act shall be known as and may be cited as "The public broadcasting ~~educational television~~ act of 1971 ~~1969~~".

NEW SECTION. Sec. 2. The purpose of this act is to establish an ~~a reorganized and~~ integrated state system of ~~noncommercial educational~~ public broadcastin ~~television~~ in order to provide the means for:

(1) The broadest instructional television service possible for all levels of education at educational institutions within the public and private state;

(2) The broadest distribution possible of instructional and public television to all geographical areas of the state;

(3) The establishment, operation, and maintenance of a Washington state public broadcasting ~~educational television~~ network and such other distribution systems as are deemed necessary.

(4) The coordination of public and instructional ~~educational~~ television in order to avoid ~~ensure the elimination and avoidance of~~ unnecessary duplication of programming, coverage, and broadcasting and to ensure an equitable distribution within the state of public and instructional ~~educational~~ television opportunity; and,

(5) The development of instructional programming by the agencies and officials who have the legal or constitutional responsibility for such areas of instruction.

NEW SECTION. Sec. 3. As used in this act, unless the context

(6) The improvement and strengthening of the fiscal operations and management of educational television stations in order to permit such stations to more effectively serve the needs of the state and their respective local communities.

requires otherwise, the term:

(1) "~~Authority~~" Commission shall mean the Washington state ~~educational television authority~~ public broadcasting commission created in section 4 of this act.

(2) "Public member" shall mean those members of the ~~authority~~ commission appointed under section 5 (1) of this act.

(3) "Ex officio member" shall mean those members of the authority enumerated in section 5(2) of this act.

(4) "Council" shall mean those councils created under section 21 of this act.

(5) "State system for ~~educational television~~ public broadcasting", hereinafter in this act referred to as the state system, shall mean the ~~authority~~ commission, its owned and affiliated stations, and its network. and such other distribution systems as are deemed necessary by the commission.

(6) "~~Manager~~ Director" shall mean the ~~manager~~ director of the state system for ~~educational television~~ public broadcasting.

(7) "~~Educational television~~ Public broadcasting" shall mean all services provided through the ~~authority~~ commission, its owned and affiliated stations, and its network, and shall encompass both instructional and public television and distribution systems.

(8) "Instructional television" shall mean those programs produced for use in formal classrooms or by viewers at home, for credit.

(9) "Public television" shall mean those programs produced for noncredit, out-of-school viewers.

(10) "Independent stations" shall mean those educational television stations licensed and operated by other agencies of the state that choose to remain independent from and not affiliated with the state system. Such stations would include those existing stations which elect not to receive their operating and capital funds from allocations of the ~~authority~~ commission created under this act but elect to contract with the ~~authority~~ commission for services of the state system and/or to provide by contract with the ~~authority~~ commission services to the state system.

(11) "Affiliated stations" shall mean those educational television stations that choose to affiliate with, ~~and~~ use, and/or contribute to the services of the state system, but are licensed and operated by other agencies of the state, including the school districts and institutions of higher education.

(12) "~~Authority~~ Commission stations" shall mean those educational television stations which are licensed directly to the ~~authority~~ commission created under this act. Such stations would include those existing stations which elect to transfer their licenses to the ~~authority~~ commission and such new stations as the ~~authority~~ commission deems necessary to establish for completion of the master plan.

(13) "Governing board" shall mean the legally constituted board licensed by the federal communications commission to operate an educational television station.

NEW SECTION. Sec. 4. There is hereby created a state agency to be known as the Washington state ~~education television authority~~ public broadcasting commission.

NEW SECTION. Sec. 5. The ~~authority~~ commission shall consist of:

(1) Eleven public members representative of the following enumerated categories to be appointed by the governor for four year terms. In making such appointments the governor shall ensure that board members are representative of ~~both the public and~~ private school sectors, of both major political parties, of the several geographical areas of this state, and of the business, professional and labor communities: PROVIDED, That the initial terms of the first public members of the ~~authority~~ commission shall be selected by lot and shall be as follows: three members for a one year term, three members for a two year term, three members for a three year term, and two members for a four year term.

(2) ~~Four~~ Five ex officio members who shall be the superintendent of public instruction or his designee; the director of vocational education for the coordinating council for occupational education or his designee; the director of the state system for community college education or his designee; ~~and~~ the executive officer of ~~a~~ the state ~~planning and/or coordinating agency~~ council for higher education ~~created subsequently to this act~~ or his designee; and the chairman of the council of station manage created in Section ___ of this act or his designee. ~~PROVIDED, That if such a planning and/or coordinating agency is not created for higher education the members of the higher education facilities commission shall select a person to serve as a member of the authority and at the pleasure of the mem-~~

bers of the higher education facilities commission.

NEW SECTION. Sec. 6. The successors of the public members initially appointed shall be appointed for terms of four years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of such term.

NEW SECTION. Sec. 7. Terms for public members shall expire at midnight, June 30th of the respective year for which the term expires: PROVIDED, That each member shall serve until the appointment and qualification of his successor.

NEW SECTION. Sec. 8. Ex officio members shall serve as long as they hold their respective positions, as indicated in section 5 of this act. Such persons shall be full members of the ~~authority~~ commission but shall be ineligible to vote or serve as officers of the ~~authority~~ commission. ~~Membership on the authority shall be considered for all purposes as part of the official activities of the state office which they hold. Travel expenses for activities connected with the authority shall be borne from the funds of their respective agency.~~

NEW SECTION. Sec. 9. Public members shall not receive any salary for their service but shall receive per diem and travel expenses as provided for certain elected officials in RCW 44.04.120, as now or hereafter amended.

NEW SECTION. Sec. 10. The ~~authority~~ commission may employ a ~~manager~~ director of the state system of ~~educational television~~ public broadcasting, a deputy ~~manager~~ director, and ~~such assistant managers~~ directors for the administration and management of the system as deemed necessary. Such positions shall be exempted from the provisions of chapter 41.06 RCW and such employees shall serve at the pleasure of the ~~authority~~ commission and have their salaries fixed by the ~~authority~~ commission.

NEW SECTION. Sec. 11. In addition to the employees enumerated in section 10 of this act, the ~~manager~~ director, subject to the provisions of chapter 41.06 RCW and the approval of the ~~authority~~ commission, shall appoint and employ such field and office assistants, clerks, and other

employees as may be required and authorized for the proper discharge of the functions of the ~~authority~~ commission.

NEW SECTION. Sec. 12. The ~~authority~~ commission is authorized to purchase and own such real property in various localities within the state as is necessary for the operation and management of the state ~~educational television~~ public broadcasting system, including the operation and management of a state ~~educational television~~ public broadcasting network, production, ~~and~~ programming, and distribution facilities, and such educational television stations owned and licensed by the ~~authority~~ commission.

NEW SECTION. Sec. 13. A majority of the ~~authority~~ public members of the commission shall constitute a quorum. No meeting shall be held with less than a quorum present, and no action shall be taken unless by concurrence of a majority of the ~~authority~~ public members of the commission.

NEW SECTION. Sec. 14. In addition to the other powers and duties imposed upon the ~~authority~~ commission by this act, the ~~authority~~ commission shall be charged with the following powers, duties, and responsibilities:

(1) Analyze ~~and~~ present and the future aims, needs, and requirements of ~~educational television~~ public broadcasting in the state; this shall include the preparation of a master plan for the development, expansion, integration, coordination, and efficient use of facilities and staff; such master plan shall set forth the philosophy and goals of the state regarding ~~educational television~~ public broadcasting;

(2) Having effected an initial master plan, engage in continuing study and evaluation of said plan making the necessary modifications thereto and seek implementation of such plan and modifications by those officials and agencies affected;

(3) Recommend to the governing boards of independent and affiliated stations such new policies as deemed desirable for the implementation of the master plan or other matters related to an efficient state system for ~~educational television~~ public broadcasting;

(4) Provide, operate, and maintain a state ~~educational television~~ public broadcasting network service, including production and transmission facilities and the means of interconnection between the various ele- distribution and

ments of the system; such facilities and means shall not be utilized ~~only~~ for ~~non-~~commercial ~~educational television and shall not be utilized to provide inter-city~~ transmission ~~provided by common carrier~~;

(5) Allocate, from funds provided to the ~~authority~~ commission, funds to ~~authority~~ commission and affiliated stations for approved capital and operating costs;

(6) Expend funds for state-level operations related to programming, production, broadcasting, and other approved activities;

(7) Appoint such consultants and advisory committees and enter into such contracts, including contracts with independent stations, as are appropriate to carry out the ~~authority's~~ commission's responsibilities;

(8) Conduct such studies as requested by the legislature or by the ~~authority~~ commission itself and report its findings to the governor and the legislature; and

(9) Report such information as requested by the governor.

NEW SECTION. Sec. 15. Initial appointment of public members of the ~~authority~~ commission shall be made prior to June 15, ~~1969~~ 1971. The first meeting of the ~~authority~~ commission shall be held no later than July 15, ~~1969~~ 1971 at a place and time designated by the governor. Thereafter the ~~authority~~ commission shall meet at a time and place designated by its chairman.

NEW SECTION. Sec. 16. The ~~authority~~ commission shall by the majority vote select annually a chairman and vice chairman and adopt such by-laws for its own internal operations, including the calling of special meetings, as are consistent with this act. ~~Authority~~ Commission rules and regulations applicable to external procedure shall be subject to the administrative procedure act, chapter 34.04 RCW as now or hereafter amended.

NEW SECTION. Sec. 17. All matters relating to payment of compensation and other expenses of the ~~authority~~ commission shall be subject to the state budget and accounting system. Expenditures and allocations shall be subject to approval of the ~~authority~~ commission and the ~~manager~~ director shall sign all vouchers approved by the ~~authority~~ commission.

PROVIDED, That the commission, for its network and distribution service, shall seek to utilize common carrier facilities when feasible for intercity transmission; PROVIDED FURTHER, That should the state establish a state-wide telecommunication system, subsequent to the passage of this act, the commission shall seek to cooperate in the use of such facility.

NEW SECTION. Sec. 18. Nothing in this act shall be deemed to derogate from powers and duties presently conferred upon the separate governing boards licensed to cperate educational television stations. Such governing boards may choose to remain independent from, or affiliate with, the state system and network. In addition, any governing board, subject to the provisions of sections 26 and 27 of this act and the rules and regulations of the federal communications commission, may choose by a resolution approved by its members to transfer its educational television broadcasting license to the ~~authority~~ commission.

NEW SECTION. Sec. 19. The ~~authority~~ commission shall have full authority to apply for and to own, operate, and manage such educational television stations for which it holds the license which shall include all new educational television stations provided by state funds. The ~~authority~~ commission may by rule and regulation provide such operating machinery that is deemed desirable for the management of ~~authority~~ commission-owned educational television stations.

NEW SECTION. Sec. 20. The ~~authority~~ commission, in addition to any funds appropriated from time to time to carry out the purposes of this act, may add thereto federal funds or any private gifts or grants made available to the state for educational television purposes. Such federal or private funds shall be expended in accordance with the conditions of such grants. In addition the ~~authority~~ commission may contract with public and private agencies for such services that are consistent with the purposes of the state system of ~~educational television~~ public broadcasting.

NEW SECTION. Sec. 21. There is hereby created under the auspices of the ~~authority~~ commission the following councils:

(1) The council for common school instructional television which shall consist of the superintendent of public instruction, or his designee, who also shall serve as chairman of the council and four members appointed by the superintendent of public instruction from among personnel certificated by the state board of education.

(2) The council for vocational-technical instructional television which shall consist of the director of vocational education

for the coordinating council for occupational education, or his designee, who also shall serve as chairman of the council, and two members appointed by the superintendent of public instruction from among personnel certificated by the coordinating council for occupational education and two members appointed by the director of the state system for community college education from among personnel certificated by the coordinating council for occupational education.

-Such council shall seek advice from the professional, business, and labor communities.

(3) The council for community college instructional television which shall consist of the director of the state system for community college education or his designee, who also shall serve as chairman of the council, and four members appointed by the director of the state system for community college education from among the instructional personnel of the community college system.

(4) The council for college and university instructional television which shall consist of the ~~ex officio member from~~ higher education ~~noted in section 5 (2) of this act~~, or his designee, who also shall serve as chairman of the council, and four members appointed by such ~~ex officio member of the authority~~ executive officer of the state council for higher education from among the faculty of colleges and universities within the state.

-executive officer of the state council for

(5) The council for public television which shall consist of the public members of the ~~authority~~ commission. Such council shall annually select a chairman from among its members.

(6) The council of educational television station managers which shall consist of managers of the independent, affiliated, and commission stations within the state, such council shall annually select a chairman from among its members.

(7) ~~(6)~~ Such additional councils with such membership as deemed desirable by the ~~authority~~ commission.

NEW SECTION. Sec. 22. Members of the councils, with the exception of the members of the ~~authority~~ commission and the council of station managers, shall serve at the pleasure of the appointing official ~~and~~ shall be reimbursed for expenses from funds of the ~~authority~~ commission in accordance with RCW 43.03.050 and 43.03.060, as now or hereafter amended.

Ex officio members of the commission and members of the councils

NEW SECTION. Sec. 23. The ~~manager~~ director of the state system for ~~educational television~~ public broadcasting or his designee shall serve as the executive secretary for each of the councils enumerated in section 21 of this act. The ~~authority~~ commission shall prescribe rules of procedure for the

councils that are not inconsistent with the provisions of this act, including the establishment of guidelines to define the jurisdiction of the respective councils.

NEW SECTION. Sec. 24. The councils shall have general supervision over the planning and development of programs funded by the authority for their respective area of instructional or public television. Such programs may be produced in state owned production facilities, by contract with independent and affiliated stations, or through other public and private agencies. In the event the legislature makes appropriations available ~~for all or~~ a portion of the financial support of educational television, ~~educational television programs~~, television program aids and all other related instructional materials shall be made available free of charge to all students that attend public or private schools. All funds budgeted and expended by the commission ~~authority~~ for program aids and program production, except those funds provided directly to each affiliated station for a predetermined amount of discretionary program production, shall be approved by the respective council. On all other matters such councils shall serve solely in an advisory capacity to the commission ~~authority~~.

26

NEW SECTION. Sec. ~~25~~. The transfer of an educational television broadcasting license from the governing board of an existing station to the commission ~~authority~~ shall be subject to the requirements of the federal communications commission and mutual agreement between the governing board and the commission ~~authority~~ regarding transfer of real and personal assets, operating funds for the remainder of the fiscal period from the date of transfer, and other matters.

27

NEW SECTION. Sec. ~~26~~. It is the intent of the legislature to protect and honor all previous commitments for employees of the educational television stations whose licenses are transferred to the commission ~~authority~~. Upon such transfer, the commission ~~authority~~ shall agree to hire all employees with six months' continuous full time employment with all seniority rights, to allow each employee to transfer his accumulated sick and vacation leave, and to continue without interruption the

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NEW SECTION. Sec. 25. The council of station managers shall advise the commission on the operating and capital budgets of the commission and affiliated stations, including funds to be allocated to each affiliated station for a predetermined amount of discretionary program production, and the selection of a director for the state system of public broadcasting.

employee participation in approved insurance and retirement programs: PROVIDED, That all transferred employees with less than five years previous service or under fifty-five years of age shall be enrolled in the state employees' retirement system. For all other employees the ~~authority~~ commission is authorized and directed to continue the employee in his established retirement system if so requested by the employee.

NEW SECTION. Sec. ~~27~~ 28. Nothing in this act shall be deemed to derogate from the powers and duties conferred upon the governing boards at the common schools or institutions of higher education regarding any instructional or training program in any subject matter area, including instructional and training programs related to any aspect of the various fields in the broadcasting industry. In addition, no funds shall be allocated by the ~~authority~~ commission for such instructional or training program.

NEW SECTION. Sec. ~~28~~ 29. The ~~authority~~ commission shall seek the assistance of the staff of the existing educational television and radio stations and other public and private agencies involved and shall prepare for the ~~forty-second~~ third session of the legislature a comprehensive plan for the development of the ~~state's educational television~~ public broadcasting system. Such stations and agencies are directed to give full cooperation to the ~~authority~~ commission in the development of the comprehensive plan ~~----------~~

~~NEW SECTION. Sec. 29. There is hereby appropriated from the state's general fund to the Washington state educational television authority the sum of fifty thousand dollars or so much thereof as necessary for operations of the authority during the 1969-71 biennium.~~

NEW SECTION. Sec. 30. Chapter 129, Laws of 1965 ex. sess. and chapter 28.91 RCW are each hereby repealed and chapter 28A.91 RCW is hereby repealed on the effective date of the 1969 education code (HB 58).

NEW SECTION. Sec. 31. If any provision of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other

--the joint committee on education and provided for in this act and shall prepare for that same session a comprehensive report on the desirability of establishing a state agency for the coordination and financing of educational radio.

and the comprehensive report.

persons or circumstances is not affected.

NEW SECTION. Sec. ~~32~~ 33. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

APPENDIX C

PROPOSED PUBLIC BROADCASTING ACT OF 1971

AN ACT Relating to public and instructional educational television repealing sections 28A.91.010 through 28A.91.060, chapter 223, Laws of 1969 ex. sess. and chapter 28A.91 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Sections 1 through 28 of this 1971 act shall be known as and may be cited as "The public broadcasting act of 1971."

NEW SECTION. Sec. 2. The purpose of this 1971 act is to establish an integrated state system of public broadcasting in order to provide the means for:

(1) The broadest instructional television service possible for all levels of education at public and private educational institutions within the state;

(2) The broadest distribution possible of instructional and public television to all geographical areas of the state;

(3) The establishment, operation, and maintenance of a Washington state public broadcasting network, and such other distribution systems as are deemed necessary for the public interest;

(4) The coordination of public and instructional television in order to avoid unnecessary duplication of programming, coverage, and broadcasting and to ensure an equitable distribution within the state of public and instructional television opportunity;

(5) The development of instructional programming by the agencies and officials who have the legal or constitutional responsibility for such areas of instruction; and

(6) The improvement and strengthening of the fiscal operations and management of educational television stations in order to permit such stations to more effectively serve the needs of the state and their respective local communities.

NEW SECTION. Sec. 3. As used in this 1971 act, unless the context requires otherwise, the term:

(1) "Commission" shall mean the Washington state public broadcasting commission created in section 4 of this 1971 act.

(2) "Public member" shall mean those members of the commission appointed under section 5 subsection (1) of this 1971 act.

(3) "Ex officio member" shall mean those members of the authority enumerated in section 5 subsection (2) of this 1971 act.

(4) "Council" shall mean those councils created under section 21 of this 1971 act.

(5) "State system for public broadcasting," hereinafter in this 1971 act referred to as the state system, shall mean the commission, its owned and affiliated stations, and its network, and such other distribution systems as are deemed necessary by the commission.

(6) "Director" shall mean the director of the state system for public broadcasting.

(7) "Public braodcasting" shall mean all services provided through the commission, its owned and affiliated stations, and its network and distribution systems, and shall encompass both instructional and public television.

(8) "Instructional television" shall mean those programs produced for use in formal classrooms or by viewers at home, for credit.

(9) "Public television" shall mean those programs produced for noncredit, out-of-school viewers.

(10) "Independent stations" shall mean those educational television stations licensed and operated by other agencies of the state that choose to remain independent from and not affiliated with the state system. Such stations would include those existing stations which elect not to receive their operating and capital funds from allocations of the commission created under this 1971 act but elect to contract with the commission for services of the state system and/or to provide by contract with the commission services to the state system.

(11) "Affiliated stations" shall mean those education television stations that choose to affiliate with, use, and/or contribute to the services of the state system, but are licensed and operated by other agencies of the state, including the school districts and institutions of higher education.

(12) "Commission stations" shall mean those educational television stations which are licensed directly to the commission created under this 1971 act. Such stations would include those existing stations which elect to transfer their licenses to the commission and such new stations as the commission deems necessary to establish for completion of the master plan.

(13) "Governing board" shall mean the legally constituted board licensed by the federal communications commission to operate an educational television station.

NEW SECTION. Sec. 4. There is hereby created a state agency to be known as the Washington state public broadcasting commission.

NEW SECTION. Sec. 5. The commission shall consist of:

(1) Eleven public members representative of the following enumerated categories to be appointed by the governor for four year

terms. In making such appointments the governor shall ensure that board members are representative of both the public and private school sector, of both major political parties, of the several geographical areas of this state, and of the business, professional and labor communities: PROVIDED, That the initial terms of the first public members of the commission shall be selected by lot and shall be as follows: Three members for one year terms, three members for two year terms, three members for three year terms, and two members for four year terms.

(2) Five ex officio members who shall be the superintendent of public instruction or his designee; the director of vocational education for the coordinating council for occupational education or his designee; the director of the state system for community colleges or his designee; the executive officer of the council on higher education (state) or his designee; and the chairman of the council of educational station managers created in section 22 subsection (6) of this 1971 act or his designee.

NEW SECTION. Sec. 6. The successors of the public members initially appointed shall be appointed for terms of four years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of such term.

NEW SECTION. Sec. 7. Terms for public members shall expire at midnight, June 30th of the respective year for which the term expires: PROVIDED, That each member shall serve until the appointment and qualification of his successor.

NEW SECTION. Sec. 8. Ex officio members shall serve as long as they hold their respective positions, as indicated in section 5 of this 1971 act. Such persons shall be full members of the commission but shall be ineligible to vote or serve as officers of the commission.

NEW SECTION. Sec. 9. Public members shall not receive any salary for their service but shall receive per diem and travel expenses as provided for certain elected officials in RCW 44.04.120, as now or hereafter amended.

NEW SECTION. Sec. 10. The commission may employ a director of the state system of public broadcasting, a deputy director, and such assistant directors for the administration and management of the system as deemed necessary. Such positions shall be exempted from the provisions of chapter 41.06 RCW and such employees shall serve at the pleasure of the commission and have their salaries fixed by the commission.

NEW SECTION. Sec. 11. In addition to the employees enumerated in section 10 of this 1971 act, the director, subject to the provisions of chapter 41.06 RCW and the approval of the commission, shall appoint and employ such field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the commission.

NEW SECTION. Sec. 12. The commission is authorized to purchase and own such real property in various localities within the state as is necessary for the operation and management of the state public broadcasting system, including the operation and management of a state public broadcasting network, production, programming, and distribution facilities, and such educational television stations owned and licensed by the commission.

NEW SECTION. Sec. 13. A majority of the public members of the commission shall constitute a quorum. No meeting shall be held with less than a quorum present, and no action shall be taken unless by concurrence of a majority of the public members of the commission.

NEW SECTION. Sec. 14. In addition to the other powers and duties imposed upon the commission by this 1971 act, the commission shall be charged with the following powers, duties, and responsibilities:

(1) Analyze and present the future aims, needs, and requirements of public broadcasting in the state; this shall include the preparation of a master plan for the development, expansion, integration, coordination, and efficient use of facilities and staff; such master plan shall set forth the philosophy and goals of the state regarding public broadcasting;

(2) Having effected an initial master plan, engage in continuing study and evaluation of said plan making the necessary modifications thereto and seek implementation of such plan and modifications by those officials and agencies affected;

(3) Recommend to the governing boards of independent and affiliated stations such new policies as deemed desirable for the implementation of the master plan or other matters related to an efficient state system for public broadcasting;

(4) Provide, operate, and maintain a state public broadcasting network service, including production and transmission facilities and the means of distribution and interconnection between the various elements of the system; such facilities and means shall not be utilized for commercial transmission: PROVIDED, That the commission, for its network and distribution service, shall seek to utilize common carrier facilities when feasible for intercity transmission: PROVIDED FURTHER, That should the state establish a statewide telecommunication system, subsequent to the passage of this 1971 act, the commission shall seek to cooperate in the use of such facility;

(5) Allocate, from funds provided to the commission, funds to commission and affiliated stations for approved capital and operating costs;

(6) Expend funds for state-level operations related to programming, production, broadcasting, and other approved activities;

(7) Appoint such consultants and advisory committees and enter into such contracts, including contracts with independent stations, as are appropriate to carry out the commission's responsibilities;

(8) Conduct such studies as requested by the legislature or by the commission itself and report its findings to the governor and the legislature; and

(9) Report such information as requested by the governor.

NEW SECTION. Sec. 15. Initial appointment of public members of the commission shall be made prior to June 15, 1971. The first meeting of the commission shall be held no later than July 15, 1971 at a place and time designated by the governor. Thereafter the commission shall meet at a time and place designated by its chairman.

NEW SECTION. Sec. 16. The commission shall by majority vote select annually a chairman and vice chairman and adopt such bylaws for its own internal operations, including the calling of special meetings, as are consistent with this 1971 act. Commission rules and regulations applicable to external procedure shall be subject to the administrative procedure act, chapter 34.04 RCW, as now or hereafter amended.

NEW SECTION. Sec. 17. All matters relating to payment of compensation and other expenses of the commission shall be subject to the state budget and accounting system. Expenditures and allocations shall be subject to approval of the commission and the director shall sign all vouchers approved by the commission.

NEW SECTION. Sec. 18. Nothing in this 1971 act shall be deemed to derogate from powers and duties presently conferred upon the separate governing boards licensed to operate educational television stations. Such governing boards may choose to remain independent from, or affiliate with, the state system and network. In addition, any governing board, subject to the provisions of sections 26 and 27 of this 1971 act and the rules and regulations of the federal communications commission, may choose by a resolution approved by its members to transfer its educational television broadcasting license to the commission.

NEW SECTION. Sec. 19. The commission shall have full authority to apply for and to own, operate, and manage such educational television stations for which it holds the license, which shall include all new educational television stations provided by state funds. The commission may by rule and regulation provide such operating machinery that is deemed desirable for the management of commission-owned educational television stations.

NEW SECTION. Sec. 20. The commission, in addition to any funds appropriated from time to time to carry out the purposes of this 1971 act, may add thereto federal funds or any private gifts or grants made available to the state for educational television purposes. Such federal or private funds shall be expended in accordance

with the conditions of such grants. In addition the commission may contract with public and private agencies for such services that are consistent with the purposes of the state system of public broadcasting.

NEW SECTION. Sec. 21. There is hereby created under the auspices of the commission the following councils:

(1) The council for common school instructional television which shall consist of the superintendent of public instruction, or his designee, who also shall serve as chairman of the council, and four members appointed by the superintendent of public instruction from among personnel certificated by the state board of education.

(2) The council for vocational-tecnical instructional television which shall consist of the director of vocational education for the coordinating council for occupational education, or his designee, who also shall serve as chairman of the council, and two members appointed by the superintendent of public instruction from among personnel certificated by the coordinating council for occupational education and two members appointed by the director of the state system of community college, from among personnel certificated by the coordinating council for occupational education. Such council shall seek advice from the professional, business, and labor communities.

(3) The council for community college instructional television which shall consist of the director of the state system of community colleges or his designee, who also shall serve as chairman of the council, and four members appointed by the director of the state system of community colleges from among the instructional personnel of the community college system.

(4) The council for college and university instructional television which shall consist of the executive officer of the council on higher education (state), or his designee, who also shall serve as chairman of the council, and four members appointed by such executive officer of the council on higher education (state) from among the faculty of colleges and universities within the state.

(5) The council for public television which shall consist of the public members of the commission. Such council shall annually select a chairman from among its members.

(6) The council of educational television station managers which shall consist of managers of the independent, affiliated, and commission stations within the state. Such council shall annually select a chairman from among its members.

(7) Such additional councils with such membership as deemed desirable by the commission.

NEW SECTION. Sec. 22. Members of the councils, with the exception of the members of the commission and the council of station managers, shall serve at the pleasure of the appointing official. Ex officio members of the commission and members of the councils shall be reimbursed for expenses from funds of the commission in accordance with RCW 43.03.050 and 43.03.060, as now or hereafter amended.

NEW SECTION. Sec. 23. The director of the state system for public broadcasting or his designee shall serve as the executive secretary for each of the councils enumerated in section 21 of this 1971 act. The commission shall prescribe rules of procedure for the councils that are not inconsistent with the provisions of this 1971 act, including the establishment of guidelines to define the jurisdiction of the respective councils.

NEW SECTION. Sec. 24. The councils, with the exception of the council of station managers, shall have general supervision over the planning and development of programs funded by the commission for their respective area of instructional or public television. Such programs may be produced in state owned production facilities, by contract with independent and affiliated stations, or through other public and private agencies. In the event the legislature makes appropriations available to the commission for the major portion of the financial support of educational television, television program aids and all other related instructional materials shall be made available by the appropriate council free of charge to all students that attend public or private schools within the state of Washington. All funds budgeted and expended by the commission for program aids and program production, except those funds provided directly to each affiliated station for a predetermined amount of discretionary program production, shall be approved by the respective council. On all other matters such councils shall serve solely in an advisory capacity to the commission.

NEW SECTION. Sec. 25. The council of station managers shall advise the commission on the operating and capital budgets of the commission and affiliated stations, including funds to be allocated to each affiliated station for a predetermined amount of discretionary program production; and the selection of a director for the state system of public broadcasting.

NEW SECTION. Sec. 26. The transfer of an educational television broadcasting license from the governing board of an existing station to the commission shall be subject to the requirements of the federal communications commission and mutual agreement between the governing board and the commission regarding transfer of real and personal assets, operating funds for the remainder of the fiscal period from the date of transfer, and other matters.

NEW SECTION. Sec. 27. It is the intent of the legislature to protect and honor all previous commitments for employees of the educational television stations whose licenses are transferred to the commission. Upon such transfer, the commission shall agree to hire all employees with six months' continuous full time employment with all seniority rights, to allow each employee to transfer his accumulated sick and vacation leave, and to continue without interruption the employee participation in approved insurance and retirement programs: PROVIDED, That all transferred employees with less than five years previous service or under fifty-five years of age shall be enrolled in the state employees' retirement system. For all other employees the commission is authorized and directed to continue the employee in his established retirement system if so requested by the employee.

NEW SECTION. Sec. 28. Nothing in this 1971 act shall be deemed to derogate from the powers and duties conferred upon the governing boards at the common schools or institutions of higher education regarding any instructional or training program in any subject matter area, including instructional and training programs related to any aspect of the various fields in the broadcasting industry. In addition, no funds shall be allocated by the commission for such instructional or training program.

NEW SECTION. Sec. 29. The commission shall seek the assistance of the staff of the existing educational television and radio stations and other public and private agencies involved and shall prepare for the joint committee on education of the legislature and the forty-third session of the legislature a comprehensive plan for the development of the public broadcasting system provided for in this 1971 act and shall prepare for that same session a comprehensive report on the desirability of establishing a state agency for the coordination and financing of educational radio. Such existing educational and radio stations and agencies are directed to give full cooperation to the commission in the development of the comprehensive plan and the comprehensive report.

NEW SECTION. Sec. 30. Sections 28A.91.010 through 28A.91-.060, chapter 223, Laws of 1969 ex. sess. and chapter 28A.91 RCW are each hereby repealed.

NEW SECTION. Sec. 31. If any provision of this 1971 act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 32. This 1971 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

APPENDIX D

OFFICE OF THE ATTORNEY GENERAL

SLADE GORTON ATTORNEY GENERAL
TEMPLE OF JUSTICE OLYMPIA, WASHINGTON 98501

December 30, 1969

M E M O R A N D U M

To: Joint Committee on Education

From: Douglas Cook, Assistant Attorney General

Subject: Proposed Legislation Regarding Educational Television

You recently requested a written memorandum regarding the constitutionality of the following provision of Substitute Senate Bill 279, which failed to pass the 1969 legislature:

> "In the event the legislature makes appropriations available for all or a portion of the financial support of educational television, educational television programs, television program aids and all other related instructional material shall be available free of charge to all students that attend public or private schools."

Because the questions relating to the United States Constitution are more easily answered, I will consider them first. The first amendment to the United States Constitution as applied to the states through the 14th amendment prohibits any law respecting the establishment of a religion. The United States Supreme Court has formulated the test under that clause in Abington School District v. Schempp, 374 U.S. 203 (1963) as follows:

> ". . .what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the structures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. Everson v Board of Education . . ." (p. 222.)

In Board of Education v. Allen, 392 U.S. 236, 242 (1968) the Court upheld a New York law which permitted the loan of textbooks to all students whether those students attended public or private schools. The Court cited with approval Everson v. Board of Education, 330 U.S. 1, 17 (1947) in which it upheld the New Jersey scheme of reimbursing parents for expenses incurred in busing their children to parochial schools. This reimbursement plan was a part of a general program under which the state paid the fares of pupils attending public and other schools. Referring to Everson, the Court in Allen stated:

> ". . . The statute was held to be valid even though one of its results was that 'children are helped to get to church schools' and 'some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets.' . . ." (Citation omitted.)

The Court in Allen recognized the difference between buses and books. 392 U.S. 244 (1968). However, relying on Pierce v. Society of Sisters, 268 U.S. 510 (1924), the Court stated:

> ". . . if the State must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular educational function. . . ." 392 U.S. 247 (1968).

It should be noted that the Court, thus, excluded the possibility of loaning religious materials.

It is true that the factual situation presented by the proposed legislation on educational television differs somewhat from the facts presented in Allen. And, it is uncertain at this time what the exact precedential value of Allen will be. Some legal writers believe the retention of legal title in the books by the State of New York to be an important aspect of the case and a limiting factor for the case's future application. See, e.g. P. Freund, Public Aid to Parochial Schools, 82 HARV. L.R. 1680 (1969). However, it is my current judgment that the distribution of educational television aids would be sufficiently close to the facts in Allen that such program would not violate the first amendment to the United States Constitution.

The questions arising under the Washington Constitution are more complicated. In State ex rel. Dearle v. Frazier, 102 Wash. 369 (1918), our Supreme Court quoted with approval the following language from an 1891 Opinion of the Attorney General:

> ". . . 'It was, no doubt, with a full consideration of the heterogeneous elements composing our nation, and the memory of the persecutions of their ancestors, that the people of all the states adopted constitutional safeguards against religious intolerance, and all but two of the original thirteen states declared a complete divorce between the government and creed. . . .
>
> "'This growth of public sentiment has continued until the adoption of our own constitution, the provisions of which on this subject are as broad, if not broader and more positive and more comprehensive, than similar provisions in any of the other state constitutions.'"

The Dearle case, thus, sets the tone for strict construction of the Washington Constitution in this area, such method of construction continuing through more recent cases. I believe the following to be the relevant constitutional provisions applicable to this problem:

> "Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; . . . No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. . ."
>
> Article I, § 11

> "All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence."
>
> Article IX, § 4

> "The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools."
>
> Article IX, § 2

The reference to funding in Article IX, § 2 would clearly prohibit the funding of the educational television system through the common school fund if materials were distributed to private school students. In my judgment, the language in that provision which calls for the exclusive application of such funds to the support of the common schools would prohibit such distribution. In Mitchell v. Consolidated School Districts, 17 Wn. (2d) 61 (1943) our Supreme Court found a violation of Article IX, § 2. That case considered a state law which provided for the busing of private school students when those private school students attended a private or parochial school which was near a bus route used by public school students. The Court's language at page 66 of that opinion is instructive:

> ". . . it is too apparent to be denied that, for every pupil carried, there is an additional expense to the school district. For each pupil, the cost of actual transportation may be slight. Whether the expense be small or great, is, of course, no justification for the use of common school funds for other than common school purposes. . . ."

It should be noted before moving on that the court in Mitchell also found violations of Article I, § 11 and Article IX, § 4.

In Visser v. Nooksack Valley School District, 33 Wn. 2d 699, 207 P. 2d 198 (1949), our Supreme Court reconsidered the holdings in Mitchell in light of the United States Supreme Court decision in Everson, supra. It will be recalled that the holding in Everson was that incidental furnishing of public transportation to private schools did not violate the establishment clause of the United States Constitution. Our court in Visser stated:

> ". . . Although the decisions of the United States supreme court are entitled to the highest consideration as they bear on related questions before this court, we must, in light of the clear provisions of our state constitution and our decisions thereunder, respectfully disagree with those portions of the Everson majority opinion which might be construed, in the abstract, as stating that transportation, furnished at public expense, to children attending religious schools, is not in support of such schools. While the degree of support necessary to constitute an establishment of religion under the first amendment to the Federal constitution is foreclosed from consideration by reason of the decision in the Everson case, supra, we are constrained to hold that the Washington constitution, although based upon the same precepts, is a clear denial of the rights herein asserted by appellants. . . ."

The question, thus, becomes, will the distribution of program aids under the educational television bill to private school students be in support of the private institutions? One should sense at this point the delicacy of the question. Whether the Washington Supreme Court will find twenty years after the Visser opinion that such distributuion constitutes support of a private institution is open to honest disagreement. The mechanics of distribution may well determine whether or not a violation exists. In other words, the more direct the distribution to the students as opposed to through the private institution, the greater the likelihood that no violation will be found. This may be characterized as the "child benefit" theory which must be used in order to combat the "institutional support" rationale of the Visser case.

One additional provision of the Washington Constitution must be considered. Article VIII, § 5 of the State Constitution provides:

> "The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation."

Put into our context, the distribution of materials must be directly to the individual student in order to satisfy the child benefit theory. Does that distribution come within the prohibition of Article VIII, § 5? The Washington Supreme Court in Washington State Highway Commission v. Pacific Northwest Bell Telephone Co., 59 Wn. 2d 216, 367 P. 2d 605 (1961) held that Article VIII, § 5 prohibits outright grants and gifts as well as the extension of credit. In the earlier case of State v. Guaranty Trust Co., 20 Wn. 2d 588, 148 P. 2d 323 (1944), the court indicated an exception to the strict construction of Article VIII, § 5:

> "While it might be urged with much force that, as a matter of strict constitutional construction, state funds cannot be used to aid needy persons, and that this must be done, if at all, by the enumerated political subdivisions of the state, yet we did not make such distinction in the Morgan case, but seemingly adopted the view that the 'recognized public governmental functions' applied to the state in its sovereign capacity as well as to its political subdivisions;. . ."

The court, thus, inferred that a showing of financial need by the citizens would justify the grant of state monies. The question arises whether a similar justification could be supplied based upon the state's general obligation for education. See, Washington Constitution, Article IX, § 1. In my opinion, there is no current definitive answer to this question. And it should be noted that a court decision on this precise point would have horrendous ramifications for scholarships granted to the students of this state, particularly, for those scholarships granted on some basis other than financial need.

The conclusions of this memo may be summarized as follows:

1. The first amendment to the United States Constitution as applied to the states through the fourteenth amendment prohibits any law respecting the establishment of religion. The distribution of materials relating to educational television programs to students attending "church-schools" would not, in my judgment, violate the first amendment prohibition.

2. Article IX, § 2 of the Washington Constitution states that the common school fund shall be "exclusively applied to the support of the common schools." Distribution of materials bought with common school funds to pupils not in attendance at the common schools would probably violate Article IX, § 2.

3. Article I, § 11 of the Washington Constitution states, in part:

> ". . . No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. . ."

If the distribution of educational materials is made directly to the private school students, that distribution arguably does not constitute support of the religious institution. It should be noted, however, that a responsible legal rationale could be put forth in support of the opposite conclusion.

4. Article VIII, § 5 of the Washington Constitution, as interpreted, prohibits outright grants and gifts as well as the extension of state credit, except in certain justifiable cases. It is possible that the contemplated distribution would be such a case if the court found the distribution to be a part performance of the state's paramount duty expressed in Article IX, § 1.

It should be noted from the above conclusions that an absolutely accurate judgment about the constitutionality of the provision in question is not possible prior to a court ruling thereon. However, if the 1970 legislature passed this provision, our office would be prepared to defend its constitutionality. In addition, we would gladly assist the committee in drafting the bill so that potential constitutional problems could be minimized.

I trust you will find this to be of some assistance.

DC